



John R. Kasich, Governor
 Mary Taylor, Lt. Governor
 Craig W. Butler, Director

September 30, 2014

Ms. Leslie Patterson
 Remedial Project Manager
 U. S. Environmental Protection Agency, Region 5
 Superfund Remedial Response, SR-6J
 77 West Jackson Boulevard
 Chicago, Illinois 60604

RE: Ohio EPA Response Site History: South Dayton Dump and Landfill, Moraine, Ohio (Site)

Dear Ms. Patterson:

This letter follows the Ohio Environmental Protection Agency's (Ohio EPA) review of the August 27, 2014, memorandum to you from Adam Loney and Steve Quigley, Conestoga-Rovers & Associates ("CRA Memorandum"), and the companion August 27, 2014, summary thereof ("White Paper"). USEPA provided the documents to Ohio EPA on September 3, 2014. The Potential Responsible Parties (PRPs) provided the documents to Ohio EPA on September 8, 2014. Ohio EPA reviewed the documents and took the information into consideration. The following is Ohio EPA's response to issues raised in the documents:

Ohio EPA maintains that the South Dayton Dump and Landfill was originally licensed as a solid waste disposal facility in 1969 for the 45-acre property that included parcels 5172, 5173, 5174, 5175, 5176, 5177, 5178, 3275, 3278, 3753, 4423, 4610, (the "Licensed Landfill Parcels"). Throughout its history, the site was a co-disposal facility and accepted mixed wastes that included solid wastes, hazardous wastes, and other industrial wastes including fly ash and foundry sand. Though the landfill ceased to accept waste in 1996, South Dayton Dump and Landfill never closed pursuant to the 1976, 1990, 1994, or 2003 rules. Therefore, the Ohio Solid Waste Rules, Ohio Administrative Code (OAC) 3745-27, of 2003 are applicable to the Licensed Landfill Parcels.

In addition, the 25-acre property that was landfilled before the 1969 license includes parcels 3056, 3057, 3058, 5054, and 5171 (the "Northern Landfill Parcels"). Ohio EPA feels that the 2003 Ohio Solid Waste Rules are relevant and appropriate to the Northern Landfill Parcels that were landfilled before 1969 because: 1) the area was landfilled

Ohio EPA Response Site History:
 South Dayton Dump and Landfill, Moraine, Ohio (Site)
 September 30, 2014
 Page 2 of 7

before licensing was required and therefore couldn't have been the subject of the original license (therefore, the rules are not applicable); and 2) regardless of the timing, the area was landfilled and it is necessary to apply today's closure requirements to adequately protect human health and the environment. Human health and environmental hazards on these parcels include: 1) areas of waste generating methane and where subsurface gas and/or volatile organic compounds (VOCs) are present in waste at levels that have the potential to accumulate under on-site buildings and pose either an explosion hazard or a vapor intrusion threat or both to on-site workers and site visitors; 2) an area of free phase Non Aqueous Phase Liquid in the waste; 3) an area where there are suspected buried drums of hazardous and Toxic Substances Control Act waste near the surface of the fill; 4) areas where VOC ground water plumes are migrating beyond the waste management area into a federally designated sole source drinking water aquifer at concentrations in excess of drinking water standards and indoor air risk screening levels; and 5) fill material present in this area includes fly ash and foundry sand, samples of which fail the Toxicity Characteristic Leaching Procedure for lead.

There appear to be three parcels owned by the Miami Conservancy District (3274, 3275, and 3278) that were never part of the original landfill license, yet there is currently waste present on portions of these three parcels. In instances where waste extends beyond the license footprint as to encroach on neighboring properties, Ohio EPA's position is that the waste be brought back on site for closure, or the final cap must extend to cover the entirety of the waste.

The purpose of this letter is to explain:

- I. How Ohio EPA determines whether Ohio Solid Waste Rules are applicable to landfills under CERCLA
 - II. Why Ohio EPA considers Ohio Solid Waste Rules to be relevant and appropriate to specific areas of the landfill
 - III. How Ohio EPA defines "closure" under Ohio Solid Waste Rules, historically and currently
 - IV. The applicable state ARARs' effects on future decisions and work at the landfill
- I. How Ohio EPA determines whether Ohio Solid Waste Rules are applicable to landfills under CERCLA
 1. Was the landfill (i.e., the Licensed Landfill Parcels) licensed? – Yes, in 1969 the South Dayton Dump and Landfill was licensed for the 45-acre property

Ohio EPA Response Site History:
 South Dayton Dump and Landfill, Moraine, Ohio (Site)
 September 30, 2014
 Page 3 of 7

that included parcels 5172, 5173, 5174, 5175, 5176, 5177, 5178, 3275, 3278, 3753, 4423, 4610.

2. Was waste accepted? – Yes, the Licensed Landfill Parcels accepted waste material.
 3. What type of waste was accepted? – These parcels were operated as a co-disposal landfill. Waste material accepted at the Licensed Landfill Parcels included but is not limited to municipal waste, drummed industrial waste, bulk industrial waste, foundry sand, fly ash, and demolition debris. However, even if the site had only accepted “exempt” material, the Ohio Solid Waste Rules would apply to any foreign material placed within the licensed area.
 4. What timeframe was waste accepted? – According to the CRA Memorandum, the Licensed Landfill Parcels accepted waste from as early as 1969 until 1996.
 5. Did the Licensed Landfill Parcels go through closure? – No, the Licensed Landfill Parcels never closed pursuant to the 1976, 1990, 1994, or 2003 rules and is therefore, subject to the current Ohio Solid Waste Rules.
- II. Why Ohio EPA considers Ohio Solid Waste Rules to be relevant and appropriate to specific areas of the landfill:
1. Was the landfill (i.e., the Northern Landfill Parcels) licensed? – No, there are portions of South Dayton Dump and Landfill that were landfilled prior to relevant regulations. These parcels include 3056, 3057, 3058, 5054, and 5171.
 2. Was waste accepted? – Yes, the Northern Landfill Parcels accepted waste material.
 3. What type of waste was accepted? – These parcels were operated as a co-disposal landfill. Waste disposed of included but was not limited to municipal waste, drummed industrial waste, bulk industrial waste, foundry sand, fly ash, and demolition debris.
 4. What timeframe was waste accepted? – According to the CRA Memorandum, these parcels accepted waste from the turn of the century to roughly 1972.
 5. Did the Northern Landfill Parcels go through closure? – No, these parcels were never closed pursuant to the 1976, 1990, 1994, or 2003 rules.

Ohio EPA Response Site History:
 South Dayton Dump and Landfill, Moraine, Ohio (Site)
 September 30, 2014
 Page 4 of 7

The August 27, 2014, White Paper states that Ohio's current "*landfill closure requirements are not applicable or relevant and appropriate*" to several areas of the landfill. This position misconstrues the fundamental distinction between applicable requirements and relevant and appropriate requirements.

The terms "applicable" and "relevant and appropriate" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) are not the same. As discussed below, rules can be relevant and appropriate without being applicable.

CERCLA § 121(d)(1) states that remedial actions selected "shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant." 42 U.S.C. § 9621(d)(1).

CERCLA § 121(d)(2)(A) states that "with respect to any hazardous substance, pollutant or contaminant that will remain onsite," the remedial action selected "shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains" "any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation . . . identified to [USEPA] in a timely manner" if such standard, requirement, criteria, or limitation:

is legally applicable to the hazardous substance or pollutant or contaminant concerned

or

is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant.

42 U.S.C. § 9621(d)(2)(A). "Applicable requirements are those cleanup standards, controls, and other substantive environmental protection requirements, criteria, or limitations promulgated under federal or state law that specifically address a hazardous substance, pollutant, or contaminant, remedial action, location, or other circumstance at a Superfund site." USEPA, Office of Solid Waste and Emergency Response, EPA540-R-98-020, OSWER 9205.5-10A, Introduction to: Applicable or Relevant and Appropriate Requirements, February 1998, § 2.1, citing the NCP, 40 CFR § 300.400(g).

In contrast, relevant requirements "are those cleanup standards, standards of control, or other substantive environmental provisions that do not directly and fully address site conditions, but address similar situations or problems to those encountered at a Superfund site." *Id.* "Whether or not a requirement is

Ohio EPA Response Site History:
 South Dayton Dump and Landfill, Moraine, Ohio (Site)
 September 30, 2014
 Page 5 of 7

appropriate (in addition to being relevant) will vary depending on factors such as the duration of the response action, the form or concentration of the chemicals present, the nature of the release, the availability of other standards that more directly match the circumstances at the site, and other factors.” Id., citing the NCP, 40 CFR § 300.400(g)(2).

As Ohio EPA explained during the June 17, 2014, telephone conference with your assistant Regional Counsel, we feel that with respect to the Northern Landfill Parcels, filled prior to the issuance of the 1969 license, current Ohio Solid Waste Rules are relevant and appropriate. As for the Licensed Landfill Parcels, current Ohio Solid Waste Rules are applicable.

III. How Ohio EPA defines “closure” under Ohio Solid Waste Rules, historically and currently

The application of Ohio Solid Waste Rules as Applicable or Relevant and Appropriate Requirements (ARARs) under CERCLA was previously described in detail by Ohio EPA at the Garland Road Landfill site¹. This correspondence was provided to you and your assistant Regional Counsel on May 30, 2014. As discussed in attachment 1, if there is no documentation demonstrating closure of the landfill, i.e., “written certification” of closure, per OAC 3745-27-11, then the landfill is not considered closed and remains subject to the Ohio Solid Waste Rules.

The CRA Memorandum cites evidence of what could be considered cover material under previous versions of the Ohio Solid Waste Rules and claims that such material is proof of closure. However, closure under the 1976, 1990, 1994, and 2003 Ohio Solid Waste Rules requires a closure certification² to be filed with the county and the Ohio EPA. Attachment 2 is an example of closure notification under the 1976 rules for the New Carlisle landfill in Clark County. Unless a closure certification for the 45-acre licensed area of the South Dayton Dump and Landfill has been submitted to and approved by the county and Ohio EPA, the area remains subject to closure pursuant to OAC 3745-27-11.

IV. The applicable state ARARs' effects on future decisions and work at the landfill

The fact that South Dayton Dump and Landfill was licensed affects the way USEPA will define the solid waste management area in the new administrative order on consent (AOC) and statement of work (SOW) for OU1. In addition, in the event that a new AOC cannot be negotiated, applicable state ARARs affect

¹ Attachment 1, November 16, 2005 letter to Terry Branigan, US EPA, Office of Regional Counsel, from Ann Wood (now Fischbein), RE: Solid Waste ARARs at Garland Road Landfill

² OAC rule 3745-27-10(B)(1) (effective July 29, 1976) required that a “Notice of Intent” to close a sanitary landfill be provided to the Board of Health (or the Director) at least 60 days prior to closure.

Ohio EPA Response Site History:
 South Dayton Dump and Landfill, Moraine, Ohio (Site)
 September 30, 2014
 Page 6 of 7

the type of investigation and range of alternatives evaluated for parcels 5178, 3753, 4423, 4610, and 3275 of OU2 (the "Licensed Landfill Parcels of OU2").

A discussion of the original landfill license is provided in Attachment 3 (4/7/14 M. Smith to L. Patterson RE: SDDL license). Under a new AOC, Ohio EPA believes the entirety of the waste management area should be addressed as a single operable unit. The December 2010 dispute resolution arbitrarily split the Licensed Landfill Parcels into two operable units (OU1 and OU2) with independent and conflicting RI/FS processes. The RI/FS process for OU2 has thus far not recognized the applicability of Ohio's 2003 Solid Waste Rules, specifically closure requirements under OAC chapter 3745-27-11, to the Licensed Landfill Parcels in OU2.

In the event that a new AOC cannot be negotiated, the applicable Ohio Solid Waste Rules affect the work proposed under the current draft of the OU2 work plan for investigating waste on the Licensed Landfill Parcels in OU2. In the current draft of the OU2 work plan, the PRPs have proposed to sample waste for risk characterization. The assumption under the OU2 work plan is that unless the proposed investigation and subsequent risk assessment identify unacceptable risk, no action on the Licensed Landfill Parcels in OU2 is required. In addition to short comings of the draft OU2 work plan with respect to generating the data needed to support a baseline human health and ecological risk assessment³, the current investigative approach fails to recognize the obligation to comply with applicable Ohio Solid Waste Rules, specifically closure requirements under OAC chapter 3745-27-11. Instead, the investigative approach appears to be designed to raise risk-based arguments for not complying with these requirements. The proposed investigative approach is also inconsistent with USEPA *Conducting Remedial Investigations/Feasibility Studies for CERCLA Municipal Landfill Sites* guidance (February 1991), which limits the sampling of waste at municipal co-disposal landfills to determining the lateral and vertical extent of waste placement, the gross quantity of waste, the physical environment within which the waste exists, characterizing potential "hot spots", and to assist in identification of PRPs.

The approach to investigating waste on the Licensed Landfill Parcels of OU2 should focus on whether or not disposal occurred and the extent of the disposal as opposed to investigating waste for risk. Disposal undeniably occurred on the Licensed Landfill Parcels of OU2; however, a variance to the applicable closure requirements under the Ohio Solid Waste Rules can be justified per OAC 3745-27-03 (C). For example, with regard to capping requirements, such a variance could be evaluated for any part of the licensed area where it can be demonstrated that disposal did not occur or where, if waste is present, the clean-

³ On June 30, 2014, Ohio EPA provided USEPA comments on the draft OU2 work plan (April 2014).

Ohio EPA Response Site History:
South Dayton Dump and Landfill, Moraine, Ohio (Site)
September 30, 2014
Page 7 of 7

up plan calls for the waste to be removed. This was communicated to USEPA initially in an email correspondence on December 17, 2013,⁴ and to the PRPs by Ohio EPA via a conference call on March 13, 2014, and via email on March 24, 2014⁵. The Licensed Landfill Parcels of OU2 have a 15-acre Quarry Pond as a result of the gravel pit that was never fully filled in; it has been suggested that a remedy for the site could include removing any waste from the Quarry Pond and using the pond as the storm water retention pond for the rest of the capped landfill.

Ohio EPA is open to discussions as to how or where variances consistent with OAC 3745-27-03 (C) might be applied. Ultimately, Ohio EPA is not interested in blindly applying Solid Waste Rules wherever possible. Rather, Ohio EPA is interested in achieving a reasonable, protective remedy for the entire site, and believes careful evaluation of the applicable and relevant and appropriate Solid Waste Rules, with due consideration of OAC 3745-27-03, can help guide us to that end.

Should you have any questions in this regard, please call me at (937) 285-6456.

Sincerely,



Madelyn Smith
Site Coordinator
Division of Environmental Response and Revitalization

Attachments

cc: Mark Allen / Mike Starkey, DERR, SWDO
Pete Whitehouse, DERR, CO
Mark Navarre, Legal Office, CO

MS/bp

⁴ Attachment 4, 12/17/13, M. Smith to L. Patterson and B. Fishwild, RE: South Dayton Dump – revision of select Our RI/FS comments

⁵ Attachment 5, 3/24/14, L. Patterson to A. Loney, FW: SDD&L - OU2 Questions on Solid Waste Cap Requirements

Attachment 1



State of Ohio Environmental Protection Agency

RECEIVED
OHIO EPA

NOV 17 2005

SOUTHWEST DISTRICT

STREET ADDRESS:

Lazarus Government Center
122 S. Front Street
Columbus, Ohio 43215TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

November 16, 2005

Via Regular U.S. MailTerry Branigan, Esq.
Associate Regional Counsel
77 West Jackson Boulevard
Mail Code C-14J
Chicago, Illinois 60604-3590

RE: Solid Waste ARARs at Garland Road Landfill

Dear Mr. Branigan:

Per your request, I am writing this letter to memorialize Ohio EPA's position regarding which version of Ohio Administrative Code ("OAC") Rule 3745-27-11 applies to the Garland Road Landfill ("GRL") as an ARAR. This letter is only intended to address the aforementioned question and does not purport to list all Ohio ARARs. The PRP has incorrectly argued that the 1976 version of the rule applies and, in making its argument, relies upon retired Ohio EPA guidance documents that are no longer in use and, therefore, no longer valid. The current version of OAC Rule 3745-27-11 applies as explained in more detail below.

Ohio EPA records indicate that the Miami County Health Department issued approval for GRL to operate as a garbage and refuse disposal site in 1967. Thereafter, GRL ceased acceptance of waste in 1970. GM's Supplemental EECA Report, dated October 11, 2005, states that the landfill must have been at least partially closed in that it was partially covered with clean fill when the removal action began in 1994. Therefore, closure at GRL was not completed by the time the 1990 version of OAC Rule 3745-27-11 became effective.

The 1990 version of OAC Rule 3745-27-11(L) states in pertinent part that "[i]f by April 1, 1990, the permittee or licensee of the sanitary landfill facility has notified, in writing, the director, the board of health having jurisdiction, and the single county or joint county solid waste management district of the anticipated date to cease accepting solid waste and has begun closure activities in accordance with paragraph (C) of rule 3745-27-10 of the Administrative Code, as effective July 29, 1976, the permittee or licensee shall: . . . No later than 60 days after the completing of final closure activities, submit to the director and to the board...a written certification that the sanitary landfill facility has been closed in accordance

Bob Taft, Governor
Bruce Johnson, Lieutenant Governor
Joseph P. Koncelik, Director

with paragraphs (B) and (C) of rule 3745-27-10 of the Administrative Code, as effective July 29, 1976."

GRL did not provide the required notification to all of the required entities, did not complete closure, and did not certify closure as required pursuant to the 1990 version of OAC Rule 3745-27-11. Moreover, closure was not completed as of 1990. Since no alternate schedule was approved by the director, GRL did not satisfy OAC Rule 3745-27-11(H), as effective March 1, 1990, which states that "[f]inal closure activities shall be completed no later than one hundred eighty days *after final receipt of solid waste in the sanitary landfill facility* unless an alternate schedule has been approved by the director. (Emphasis added). The 1994 and 2005 versions of OAC Rule 3745-27-11(I) contain similar language. Closure at GRL was not completed as of the effective date of the 1994 and 2005 rules and no alternate schedule was approved pursuant to those rules.

In summary, the facts in this case demonstrate that GRL did not satisfy the closure requirements in place in 1976, 1990, 1994, and 2005. Accordingly, GRL is not considered closed and is subject to the closure requirements set forth in OAC Rule 3745-27-11.

To apply the current version of OAC Rule 3745-27-11 is not a retroactive application of the law because the current version of OAC Rule 3745-27-11 is addressing a current condition, which is a currently unclosed landfill that is required to complete closure. Ohio case law supports applying the current version of the rules to a current landfill even though it was created and ceased acceptance of waste prior to 1976. Specifically, in *Kays v. Schregardus* (2000), 740 N.E. 2d 1123, the court considered the application of a relatively new law to a scrap tire pile that predated the law in question. Specifically, the court upheld orders issued in 1998 pursuant to Ohio Revised Code ("ORC") §3734.85 for the clean up of a scrap tire pile that predated the effective date of ORC §3734.85. ORC §3734.85 was first adopted in 1993 and was subsequently amended in 1995. The court, in upholding the orders, stated that the orders issued pursuant to ORC §3734.85 were not a retroactive application of the law because "the orders relate to the conditions on the property as they existed in 1998 and as they exist now." *Id.* at 1128.

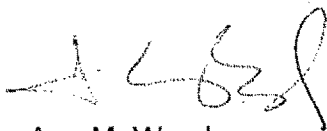
Finally, GM cites two (2) Ohio EPA guidance documents in support of its argument that it should be allowed to construct a 1976 cap at GRL and apply the 1976 version of the rules as an ARAR. Specifically, GM refers to "Standards for Current Construction of a 1976 Cap System, Guidance #0123, which cross references a guidance entitled "Measurable Criteria for Questionable Pre-1990 Caps." However, as reflected on Ohio EPA's website, both of the aforementioned guidance documents have been retired and are no longer in use. I confirmed that no similar guidance documents have been developed to replace the retired guidance.

Ohio EPA no longer utilizes the settlement approach set forth in the aforementioned documents. This means that if a facility was required to close under a previous version of the rules and does not do so, Ohio EPA will require the facility to close under the current version of the rules. The most common instances where a 1976 cap may be allowed are as follows: 1) when dealing with an open dump that would not otherwise be subject to formal closure requirements, where removal of the waste is not feasible AND a 1976 cap is determined protective; 2) when dealing with a facility that completed closure pursuant to the 1976 regulations and excavation occurs without authorization (repair of the cap will be allowed to proceed in accordance with the 1976 cap design); or 3) when a variance is obtained from Ohio EPA in accordance with OAC Rule 3745-27-03.

As we discussed previously, the variance provision set forth in ORC §3734.02 and OAC Rule 3745-27-03 is also an ARAR for GRL. Accordingly, some changes to the cap required under the current rules can be made to account for unique site conditions *so long as the variance requirements are met*.

I trust that this letter answers the questions you raised in our call a few weeks ago. If you have additional questions, you can call me at (614) 728-1833.

Sincerely,



Ann M. Wood
Staff Attorney

cc: Mark Allen, SWDO, DERR
Joe Smindak, SWDO, DERR
Jeff Hurdley, Legal
Ed Gortner, CO, DSIWM

Attachment 2



LANDFILL SYSTEMS, INC.

3850 Lower Valley Pike
Springfield, Ohio 45506
Area 513 / 323-3442

*Title Solid Waste
Clark Co
New Carlisle
or General*

RECEIVED

AUG 10 1977

Ohio Environmental Protection Agency
SOUTHWEST DISTRICT

TO: OHIO EPA
ATTENTION: MR. JOE MOORE
FROM: LANDFILL SYSTEMS, INC.
SUBJECT: CLOSING OF NEW CARLISLE LANDFILL
DATE: AUGUST 9, 1977

Herewith are blueprint copies of the New Carlisle Landfill. The area that is outlined in red, are the boundaries of the landfill area. This landfill was permanently closed as of May 12, 1977 per inspections by Joe Moore of the Ohio EPA and Howard Liest, Clark County Sanitarian.

There has been approximately fifteen foot of compacted industrial, commercial, and residential refuse placed in this area over the past twenty years. All refuse was hauled into the landfill by our own trucks. It was strictly a private landfill for our own trucking companies.

Attached is a copy ("Exhibit A") describing the acreage which the landfill is within.

Sincerely,

Rodney D. Christian
Landfill Systems, Inc.
Division of S.C.A. Services

Enclosures

RDC:flk

OHIO EPA

Re: Clark County
Solid Waste

File: New Carlisle Landfill

Rod Christian
Limestone City Reclamation Landfill
Landfill Systems
3850 Lower Valley Pike
Springfield, Ohio 45505

June 22, 1977

Dear Mr. Christian:

An inspection of the recently closed New Carlisle Sanitary Landfill was conducted on June 14, 1977. You are to be commended for the work that went into closing this landfill.

1. All waste was covered with two or more feet of earth material. No tires or litter of any type was visible.
2. All land surfaces were graded to slopes of no less than 1% and no greater than 25%.
3. The site was seeded with grasses, but additional seeding may be necessary to form a complete and dense cover.
4. The entrance to the site has been blocked by a locked gate to prevent unauthorized access. A sign has been posted that the facility is permanently closed.

This is a reminder that the new solid waste disposal regulations (EP-20-10 C-8) require that a plot of the site be filed with the Board of Health, the County Recorder, and the Director of the Ohio EPA, which plot shall accurately locate and describe the completed site and include information relating to the area, depth, volume, and nature of the waste materials deposited in the sanitary landfill.

Again, I commend you on the conscientious manner this site was closed. Furthermore, the West Champaign County Landfill (Adrian's) which you recently acquired, has been significantly upgraded. "Cliff" has made this landfill truly sanitary.

Sincerely yours,

M. Joe Moore

M. Joe Moore
Land Pollution Control Section

MJM/mlk
cc: Clark County Health Dept.
cc: Joe Speakman, Columbus

Red Christian
1-223-5442

May 24, 1977

New Carlisle Landfill,
721 Dayton Lakeview Road,
New Carlisle, Ohio

ATTN: Mr. Rod Christian

Please be informed the New Carlisle Landfill located at 721 Dayton Lakeview Road, Bethel Township, Clark County, Ohio has met Ohio E.P.A. requirements EP-20-10 Closure of Sanitary Landfills.

Although the landfill has been properly closed, section D, E, F, G, H of EP 20-10 states:

The Health Commissioner and the Director or his authorized representative, upon proper identification, may enter any closed sanitary landfill at any reasonable time for the purpose of determining compliance with this Regulation EP-20-10.

If, within three years after closure, settling occurs to such an extent that ponding of water occurs on those portions of the site where waste materials are deposited, the operator, owner, or lessee shall promptly re-grade the site and/or add additional cover material and re-seed as necessary to eliminate the ponding.

If, within three years after closure, cracking or erosion of the cover material occurs to such an extent that water may enter the cells, the operator, owner, or lessee shall promptly re-grade the site/or add additional cover material, and re-seed as necessary to eliminate the cracking and erosion.

All monitor wells required by this Chapter, EP-20, shall be maintained by the operator, owner, or lessee in such condition that water samples may be obtained for a period of three years after closure.

If, within the three year monitoring period required by paragraph(G) above, leachate is detected on the site, or is draining from the site, in such quantities that the Director or his authorized representative or the Health Commissioner believes that a substantial threat of water pollution exists,

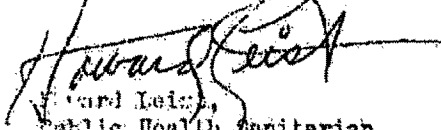
- (1) (a) leachate shall be contained on the site and properly treated, or
- (b) leachate shall be collected and transported from the site and properly treated, and
- (2) action shall be taken to control, minimize, or eliminate the conditions which contribute to the production of leachate, and
- (3) monitor wells shall be maintained by the owner, operator, or lessee in such condition that water samples may be obtained.

2. (cont.)

Actions required by this paragraph shall be continued until the Director or his authorized representative or the Health Commissioner is satisfied that actual or potential pollution of ground or surface water has been effectively controlled, minimized, or eliminated.

Your cooperation on closing this landfill was deeply appreciated and if any questions arise, please feel free to call.

Sincerely,
J. D. M. Reeve, M. D., M.P.H.
Health Commissioner



Howard Leitz,
Public Health Sanitarian
HL/lmc

OHIO DEPARTMENT OF HEALTH
CERTIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND SITES

HEALTH DISTRICT _____

Clark County

LICENSED FOR YEAR 1971

License Number	Name of Site or Facility	Address of site or facility	Est. or H. #	Volume Handled	Amount of License Fee
1	City of Springfield	East of Crabill Rd. between North Fork of Little Miami River and Pritchard Rd	1	410 Cu Yds/da	Fee Exempt
2	Delaney & Simpson	128 N Main St., New Carlisle, Ohio	1	90 cu/yds da	\$500.00
3	North Sanitary Landfill	Snyder-Domer Rd., West of Tremont City	1	900 Cu yds/da	500.00
4	Clark County Landfill	1200 Cold Springs Rd., Springfield, Ohio	1	250 Cu Yds/da	500.00
<p>*Indicate type by number 1. Sanitary landfill 2. Incinerator Facility 3. Composting</p>					

Attachment 3

Unknown

From: Smith, Madelyn
Sent: Monday, April 07, 2014 8:09 AM
To: 'Patterson, Leslie'
Cc: Adler, Kevn; Allen, Mark
Subject: RE: SDDL license
Attachments: 10 07 07 SDD&L Streamlined FS Report for OU1 USEPA Comments.pdf

Leslie,

I did notice that the license specifies 45 acres. On December 18, 1968 Montgomery County Health Department delivered a letter to Alcine stating that he had until the end of the month to apply for a license for his solid waste landfill. The letter indicates that new State laws now require that all landfill operators under the jurisdiction of the Montgomery County Health Department will need to apply for the State license. The letter directs Alcine to fill out an application and provide an engineering plan for his landfill by December 31, 1968. Since the deadline for submitting a landfill application was the end of the month the letter states that extensive engineering plans were not being required. However, Alcine would have to provide an operation plan that was complete enough to outline the method of operation. Then we see on January 3, 1969 Alcine submitting a landfill application and being issued a license on January 3, 1969. Part of the application (as outlined in the Dec. 18, 1968 letter) was the property map, which specifies the bounds of the licensed landfill, as well as describes the type of wastes and landfill operations. Alcine's notes on the map say "Operations consist of solid fill materials, brick, fly ash, cinders, foundry sand, steel slag, brake lining dust, dirt, clay, broken concrete, blacktop; oils, paint residue, brake fluids, chemicals for cleaning metals, solvents, etc.; and materials that are, burned, wooden pallets, wooden power poles, furniture, refrigerators, other wood product such as brush logs and railroad ties, wood from construction jobs or wrecked buildings, cardboard and paper scrap from industry and business free of garbage." On his map, Alcine identifies 70 acres, 25 of which have been landfilled already (he still owned this land at the time it wasn't until the 1993 that Valley Asphalt bought the property), 45 still need to be filled. Questions arise regarding the 25 acres that were already filled and whether or not they were included in the license, but clearly, the 45 acres needing to be filled includes the present day Quarry Pond and Ron Barnett and Jim City parcels (as well as the central parcels that are part of OU1).

I have Solid Waste and the Montgomery County Health Department looking into their requirements and what they would have done in the event that a landfill had already been in operation when the license requirements first came into effect. They should have more answers for us this week.

I think this issue has been discussed in the past and at one point in time USEPA and Ohio EPA agreed on it. The following is taken from USEPA comments issued to the PRPs July 7, 2010 (also attached): 9. Section 1.0, Introduction, Page 4, Paragraph 1, Bullets 2 and 3. CRA does not have defensible data to support developing and evaluating capping alternatives based on the "nature of the waste disposed on the various parcels in question" and the "ARARs applicable to the waste". The landfill was licensed as a sanitary landfill (what is now termed a municipal solid waste, or MSW landfill), and operated for over 20 years prior to being regulated. Three of the five samples CRA submitted for toxic characteristic leaching procedure (TCLP) analysis from this 80-acre, mixed waste landfill were also RCRA characteristic: a composite sample from test pits TP1, TP3 and TP4 on Lot 5177; a composite sample from test trenches TT21 and TT22 at Valley Asphalt; and a sample from a drum found in TT21 at Valley Asphalt. However, CRA did not evaluate any RCRA Subtitle C capping alternatives in the FS.

CRA's 2008-2010 investigations and previous data indicate the Site clearly warrants a remedial action. While the landfill may not require a hazardous waste cap (but EPA cannot determine this because CRA did not evaluate any hazardous waste capping alternatives in the FS), EPA's minimum closure requirements for the Site would be RCRA Subtitle D (solid waste) requirements. Also, since OEPA's solid waste requirements are more stringent than RCRA Subtitle D

requirements, any final remedy for the Site would also have to comply with state requirements. Moreover, since the Site was a licensed MSW landfill that never underwent closure, OEPA also considers its MSW regulations to be applicable, not just relevant and appropriate.

In Section 2.4.2.1, Landfill Cap, of the FS, CRA indicates that areas outside the formal landfill area - i.e., Lots 3753, 4423, 4610 and 3274 "would not have been the subject of the original [landfill] permit and, given the nature of the materials present on these parcels (i.e., predominantly fill with some CDD and RW) may represent areas where material was placed as clean hard fill to bring the Site to grade rather than actually being part of the landfill proper."

EPA disagrees with CRA's statement for several reasons. See discussion below; delete Bullet 2 ("the nature of the waste...") from the FS; and revise Bullet 3 as follows:

"The applicable or relevant and appropriate requirements (ARARs) specific to the types of waste disposed at the Site remedial action and the remedial alternatives developed for the Site."

Lot 3274 and Lot 4610

CRA only installed two soil borings on 6-acre Lot 3274 (VAS-13/MW-218A/B and VAS-20 at the very southern line of this lot), and two geoprobe borings on 2-acre Lot 4610 (GP09-09 and GP-10-09). CRA did not collect analytical samples of the landfill material detected in VAS-13/MW-218A/B, even though a photoionization detector (PID) over the landfill material in the MW-218B boring sleeve had a reading of 4.5 parts per million (ppm). CRA also did not collect any analytical samples from the 10 feet of landfill material found in GP09-09 or the 25 feet of landfill material found in GP10-09. Also, the soil gas sample collected from GP09-09 contained 2,000 ug/m3 of TCE, indicating there may be a source of TCE on this property.

Lot 3753 and Lot 4423

CRA only installed one test trench and one geoprobe boring at 2.57-acre Lot 3753 (TT18 and GP07-09) and one test trench, one soil boring and one geoprobe boring on 3.44-acre Lot 4423 (TT17, VAS-20 and GP08-09). Over 14 feet of landfill material was detected in TT17; over 12 feet of landfill material was detected in TT-18; and over 20 feet of landfill material was found in GP08-09. Both trenches and GP08-09 stopped before encountering undisturbed, native material.

CRA only collected two analytical samples from each trench, and no analytical samples from the landfill material in GP08-09. The test trenches were supposed to be excavated until the limits of fill were reached, but CRA terminated the test trenches before reaching undisturbed, native material.

TT17 contained five PAHs above residential screening levels; benzo(a)pyrene (990 ug/Kg) and arsenic (10.9 mg/Kg) above industrial screening levels; naphthalene (110 ug/Kg) above soil groundwater protection criteria; and other chemicals, including aroclor-1248.

TT18 contained 23 ug/Kg of 1,4-dichlorobenzene; 500 ug/Kg of methylene chloride; arsenic (17.7 mg/Kg) above industrial and residential screening criteria; benzo(a)pyrene (73 ug/Kg) above residential screening criteria; naphthalene (46 ug/Kg) above soil groundwater protection criteria; and other chemicals.

The limited number of visual, and even less analytical, data points on Lots 3753, 4423, 4610 and 3274, combined with the analytical data that was collected from these properties, does not support CRA's statement that the nature of the materials present on these parcels is predominantly fill with some construction and demolition debris (CDD) and residual waste (RW) that was placed as "clean hard, fill".

Landfill Permit

CRA contends Lots 3753, 4423, 4610 and 3274 were not the subject of the original landfill permit. However, Alcine Grillot's application and license to operate a solid waste disposal site for commercial and industrial waste was submitted in 1968 and covered 45 acres. The 1968 air photo shows that, by 1968, the Valley Asphalt property and the other properties along Dryden Road were already built over. The 1968 air photo also shows the extent of the landfill operations at the time to be fairly consistent with the extent of the landfill area shown as still needing fill material on Alcine Grillot's marked-up tax map; with the photo and map both showing Lots 3753, 4423, 4610 and 3274 as being within this area (subsequently confirmed during the OU1 investigations).

Since Valley Asphalt and the other Dryden Road properties were already built over before 1968, it is unlikely that these properties were the subject of the 1969 license for a 45-acre landfill. However, the total acreage of the landfill operations shown in the 1968 air photo and on the tax map, including Lots 3753, 4423, 4610 and 3274, is approximately 48 acres. This, along with the tax map (which also indicates 25 of the 70-acre landfill has been filled to grade and improved) and the 1968 air photo, indicates that these lots were the subject of the original landfill permit.

Maddie

From: Patterson, Leslie [mailto:patterson.leslie@epa.gov]
Sent: Friday, April 04, 2014 12:05 PM
To: Smith, Madelyn
Cc: Adler, Kevn; Allen, Mark
Subject: RE: SDDL license

Maddie,

It looks like this application is for a 45-acre landfill, which doesn't support including the entire site as part of the licensed landfill. Thoughts? Perhaps there is additional documentation?

Leslie Patterson
 Remedial Project Manager
 U. S. Environmental Protection Agency, Region 5
 Superfund Remedial Response, SR-6J
 77 West Jackson Boulevard
 Chicago, IL 60604
 tel: (312) 886-4904
 fax: (312) 692-2491
 patterson.leslie@epa.gov

From: Smith, Madelyn [mailto:madelyn.smith@epa.ohio.gov]
Sent: Thursday, April 03, 2014 11:37 AM
To: Patterson, Leslie
Cc: Adler, Kevn; Allen, Mark
Subject: RE: SDDL license

Leslie,

Please see the attached document regarding the SDD&L license.

Maddie

Madelyn Smith

Site Coordinator – Ohio EPA, Southwest District Office
 Division of Environmental Response and Revitalization
 401 E. 5th Street

Dayton, OH 45402
937-285-6456

***Ohio EPA's email addresses are changing. Please update your contact information to the new extension @epa.ohio.gov*

From: Patterson, Leslie [<mailto:patterson.leslie@epa.gov>]
Sent: Wednesday, April 02, 2014 6:05 PM
To: Smith, Madelyn
Subject: SDDL license

Maddie,

The license for South Dayton Dump & Landfill would be the best documentation of the licensed landfill, and I don't have that license.

Leslie Patterson
Remedial Project Manager
U. S. Environmental Protection Agency, Region 5
Superfund Remedial Response, SR-6J
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Attachment 4

Unknown

From: Smith, Madelyn
Sent: Tuesday, December 17, 2013 11:24 AM
To: 'Brett.Fishwild@CH2M.com'; patterson.leslie@epa.gov
Subject: RE: South Dayton Dump - revision of select OU2 RI/FS comments

Leslie and Brett,

I have reviewed the comments by CH2M Hill. After looking into it, Ohio EPA agrees with CH2M Hill's comments on CRA's approach to the exposed waste on OU2, background comparison, and VI/HHRA.

With respect to exposed waste, Ohio EPA's closure requirements are applicable to the entire landfill area identified in the license application. Therefore they are applicable to both OU1 and OU2 areas. Leaving waste exposed does not meet the closure requirements and would not be allowed, risk notwithstanding. In order to not have to cap permitted areas, they would need to apply for (and be granted) a variance to the solid waste rules. For example, a 100 acre landfill could be licensed, but only 40 acres used. If the owners want to close the landfill and not have to cap the entire 100 acres, they need to apply for (and be granted) a variance to the solid waste rules. In effect, we start with the assumption that if SDD&L is to comply with applicable closure requirements, they will need to cap the entire site or demonstrate that OU2 was not used for disposal.

We may need to have a conference call to discuss this further. I will be out of the office starting tomorrow but back on Monday, Dec. 23. Leslie, you mentioned being gone until the 30th, so perhaps after that date we can have a call to go over this and the other issues we've been working on.

Maddie

Madelyn Smith

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 Division of Environmental Response and Revitalization
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 Dayton, OH 45402
 937-285-6456

***Ohio EPA's email addresses are changing. Please update your contact information to the new extension @epa.ohio.gov*

From: Brett.Fishwild@CH2M.com [mailto:Brett.Fishwild@CH2M.com]
Sent: Monday, December 09, 2013 11:57 AM
To: patterson.leslie@epa.gov; Smith, Madelyn
Subject: South Dayton Dump - revision of select OU2 RI/FS comments

Leslie/Maddie –

During our last regulators call you requested that CH2M HILL provide additional information and clarification regarding several of our review comments for the OU2 RI/FS work plan. The action items from that call included:

- Simplified review comment on the statistical background comparison section
- Clarification on the VI review comments
- Discussion on exposed waste at ground surface, and how that might be addressed in a risk assessment

- Clarification on the ERA comments, specifically Row 26 (including attachment) of the CH2M HILL Excel file.

Please find attached a Word document that includes discussion on the statistical background comparison section, exposed waste at the surface, and VI issues. Also attached is a "App B CSM Figures" PDF file which includes the hand markup comments we referenced in our original comments.

One side comment - in regards to the discussion of sampling the exposed waste at the surface in OU2 for risk assessment, CH2M HILL has identified several factors to consider but recommends that USEPA and Ohio EPA discuss the matter as the ultimate risk managers for the site. This was a significant discussion topic with OEPA during the OU1 Streamlined FS review.

Please let us know if you have questions or concerns regarding these additional comments.

Thank you.

Brett A. Fishwild
Associate Project Manager
Geologist

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Attachment 5

Unknown

From: Patterson, Leslie <patterson.leslie@epa.gov>
Sent: Monday, March 24, 2014 11:15 AM
To: Adam Loney; Brett Fishwild; Bryan Heath; James Campbell; Ken Brown; Smith, Madelyn; Valerie Chan; Wendell Barner (wendell.barner@gmail.com)
Subject: FW: SDD&L - OU2 Questions on Solid Waste Cap Requirements

Adam,

Below is information from Maddie's discussion with OEPA solid waste staff about the solid waste cap requirements. We can follow up on this on Thursday.

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 Remedial Project Manager
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 Superfund Remedial Response, SR-6J
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 fax: (312) 692-2491
 patterson.leslie@epa.gov

From: Smith, Madelyn [<mailto:madelyn.smith@epa.ohio.gov>]
Sent: Monday, March 24, 2014 9:17 AM
To: Patterson, Leslie; Brett.Fishwild@CH2M.com
Subject: SDD&L - OU2 Questions on Solid Waste Cap Requirements

Leslie,

Please feel free to pass the following information along to the PRPs:

The PRPs had questions on what would qualify for a variance to the solid waste closure requirements – solid waste requires that the entire licensed area be capped. A variance could occur if a part of the licensed area was not used for disposal. Disposal means any waste placed in the licensed area. Solid waste was not aware of a situation where part of a licensed solid waste landfill was not required to be capped. The license holder could have modified their license if they determined that they did not want to use a part of the landfill that was originally under the license. This would have required a change to the actual license to redefine the landfill area (footprint).

The PRPs also had questions on the definition of waste and that only exempt material is on the southern parcels. Solid waste defines waste within a licensed solid waste landfill as any non-native material that was placed into the licensed area, regardless of whether or not it was exempt material at the time – waste is waste, if it went into the licensed area it requires a cap.

There may be opportunities for consolidating waste – such as moving waste from the banks of the Quarry Pond and consolidating it elsewhere within the license footprint. To the extent that the waste is completely removed from an area, we would favorably entertain not capping the area that is cleared of waste.

The PRPs had questions on who did the landfilling on the southern parcels. Regardless of who did the landfilling, the area was a licensed solid waste landfill and if waste has been placed there, it requires a cap. Anything within the footprint of the licensed landfill requires a solid waste landfill cap.

Maddie

Madelyn Smith

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